In the High Court of Punjab and Haryana at Chandigarh

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FAO.No.792 of 1987

Date of decision: 8 .11. 2006

Jagdish Chaudhary ..Appellant

Versus

Dharam Singh and others ..Respondents

Coram: Hon'ble Mr.Justice M.M.Kumar

Present: Mr. Munish Bhardwaj, Advocate
for the appellant
Mr. Neeraj Khanna,Advocate
for the respondent No.3-Insurance Company

M.M.Kumar,J.

This is an appeal filed under Section 100-D of the Motor Vehicle Act,1939 challenging the award dated 27.4.1987 of the Motor Accident Claims Tribunal, Rupnagar. The appeal has been preferred by the claimant-appellant seeking enhancement of the amount of compensation of Rs.23000/- awarded to him in lieu of injury suffered by him in that accident. The Tribunal has recorded a categorical finding on the basis of material on record that the accident on 14.8.1986 had occurred on account of rash and negligent driving of the offending vehicle namely, the truck No. PAT 8147, which was being driven by Dharam Singh driver respondent No.1. It has further been concluded that the claimant-appellant was entitled to the award of a sum of Rs.5000/- for care and carriage charges which also included the charges of treatment. A sum of Rs.3000/- was awarded for future expenses, which were likely to be incurred on the treatment for a period of six months. Under the heading of pain and suffering, claimant-appellant has been awarded a sum of Rs.5000/- and another sum of Rs.5000/- has been awarded on account of 30 % permanent disability suffered by the claimant -appellant. It is pertinent to mention that the appeal filed by the respondent No.3-Insurance Company,namely, FAO No.777 of 1987-has been dismissed on 1.11.2006. with clear finding that dismissal of that appeal was now

be considered as a bar to enhancement of the awarded amount in the instant appeal.

Mr. Munish Bhardwaj,learned counsel for the claimant-appellant has argued that on the basis of categorical statement made by the doctor, the Tribunal has concluded in unmistakable terms that the claimant-appellant had suffered 30 % permanent disability. According to the counsel, claimant-appellant was about 64 years of age and he had sustained fracture of both bones of left leg with fracture lateral condyle left tibia and fracture lateral malelous left tibia. The claimant-appellant has been kept in emergency on 16.8.1986 and has been attending the OPD at regular intervals even after the pronouncement of awards. He has laid emphasis on the statement of Dr. S.S.Gill, PW3 who has concluded that the claimant-appellant had suffered 30 % permanent partial disability. A sum of Rs.5000/- awarded by the Tribunal is absolutely inadequate according to the learned counsel. Placing reliance on the second schedule appended with the Motor Vehicle Act,1988, learned counsel has argued that in case of permanent partial disablement, such percentage of compensation would be payable as would have been paid in the case of permanent total disablement as specified under item 5(a). It has been provided by sub clause (a) of clause 5 that in case of permanent total disablement, the amount payable is to be arrived at by multiplying the annual loss of income by the multiplier applicable to the age on the date of determining the compensation. In support of his submission, learned counsel has placed reliance on a Division Bench judgment of Madhya Pradesh High Court in the case of Prem Narayan Sharma v Sunil Gupta and others 2003 ACJ 1584 and argued in a case of permanent disability of 26 %. the award of Rs.113000/- given by the Tribunal was enhanced to Rs.235826/-. He has also placed reliance on another judgment of Division Bench of Karnataka High Court in the case of Kanayyalal v Divisional Controller,Karnataka State Road Transport Corporation 2004 ACJ 653 where an award of Rs.80000/- was enhanced to Rs.298000/- in appeal.

Mr.Neeraj Khanna,learned counsel for the respondent No.3-Insurance Company has asserted that no liability could be fastened on the

Insurance Company because the claimant-appellant has failed to prove that the offending truck was insured with respondent No.3-Insurance Company. According to him, the Tribunal has proceeded on the wrong premises by accepting the factum of insurance as having been admitted by respondent No.3-Insurance Company.

Having heard the learned counsel for the parties and perusing the record of the Tribunal, I am of the view that this appeal deserve to be allowed. The Tribunal has awarded a meagre sum of Rs.5000/- for a permanent partial disability of 30 %.The claimant-appellant was 64 years old at the time of the accident. According to his statement, he own about 15-16 acres of land in district Saharsa (Bihar). He has been an employee and retired from service. He had been earning Rs.20000/- P.A. from the cultivation of land. He further deposed that after the accident he was unable to do the cultivation himself. According to him, he has to employ field worker for the aforementioned purpose. His annual income can safely be assessed as Rs.18000/- P.A. On account of disability of 30 %, he would suffer approximately loss of Rs.6000/- P.A. A multiplier of 5 is to be applied in the case of those who are above 60 years but not exceeding 65 years as per schedule. Therefore, on account of 30 % disability, the amount of compensation deserve to be enhanced to Rs.30000/-. The schedule appended to Motor Vehicles Act,1988 which has been applied for the purposes of arriving at the aforementioned compensation is considered to be a safe guide even in respect of cases which have arisen under 1939 Act. In that regard, a reference may be made to page 22 of the judgment of Hon'ble the Supreme Court in **Kaushnuma Begum v. New India Assurance Company Ltd.** (2001)2 SCC 9. The award of the Tribunal in respect of other heads does not call for any interference.

In view of the above, the award is enhanced to Rs.48000/-, the same shall be payable with interest at the rate of 9 % P.A. from the date of the filing of the petition till the date of payment. The respondents are held jointly and severally responsible to make the payment. It is directed that respondent No.3 -Insurance Company shall calculate the awarded amount and pay the same to

the claimant-appellant within a period of two months from the date certified copy of this order is received by them. The appeal stands disposed of in the above terms.

November 8,2006 (M.M.KUMAR)
nk JUDGE